

# Court of Appeals, State of Michigan

## ORDER

People of MI v David Carl Murawa

Docket No. 290402

LC No. 04-000943 FH

Patrick M. Meter  
Presiding Judge

Donald S. Owens

Michael J. Kelly  
Judges

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On the Court's own motion, the Clerk's Office is directed to docket defendant's delayed application for leave to appeal filed on February 17, 2009, as having been timely filed within the deadline set forth in MCR 7.205(F). *People v Means*, 480 Mich 989 (2007), *People v McCoy*, 480 Mich 989 (2007), *People of Rodgers*, 480 Mich 989 (2007), and *People v Kipfer*, 480 Mich 990 (2007).

Defendant's appellate attorney failed to understand that, under the court rules, the period for filing the application for leave to appeal started upon entry of the order of appointment and the application for leave to appeal had to be filed no later than April 2, 2008, 42 days after that the order of appointment. See MCR 7.205(F)(3) and MCR 7.205(F)(4). The untimely filing of the motion to correct sentence more than six months after entry of the February 16, 2007 judgment of sentence did not extend the time period to file the application for leave to appeal. See MCR 6.429(B)(2) and MCR 7.205(F)(4).

Accordingly, defendant was deprived of a direct appeal of his sentencing as a result of constitutionally ineffective assistance of appellate counsel. Costs are imposed against appellate counsel Roman J. Tyszkiewicz (53844) only, in the amount of \$250.00, to be paid to the Clerk of this Court within 21 days of the Clerk's certification of the order. This sanction is personal to the attorney and shall not be charged back to the county.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR 04 2009  
Date

*Sandra Schultz Mengel*  
Chief Clerk